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**IN THE U.S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNOPPOSED MOTION TO STAY THE HABEAS PROCEEDINGS

¹ This new evidence was the discovery of an eyewitness, Darnell Thomas. Mr. Thomas averred that he was present for the crime and that Petitioner was not the shooter. “I know the person I saw running from the scene on Phillips Street was not Man-Man”. He also averred that he had given Homicide Detectives a statement attesting to Petitioner’s innocence. This statement was not disclosed by the Commonwealth.

2. The Commonwealth is due to file their response to the Petitioner's petition on June 19, 2022.
3. Since filing the instant habeas petition, the Petitioner has been conducting additional investigation with the consent of the Philadelphia District Attorney's Office Federal Litigation and Conviction Integrity Units.
4. Counsel has recently reviewed the Homicide Detective ("H") file and the prosecutor's ("DAO") file. This review led counsel to seek to review additional documents.
5. During the H/DAO review there were multiple references to witnesses present at the scene at the time of the crime and documents from the Narcotics "Strike Force 5". It is believed that a separate file(s) exist within the Narcotics Unit which may contain information relevant to the instant homicide. Accordingly, Petitioner's counsel requested that the Commonwealth determine if such files exist and if they do, permit review of those files during the relevant time period: Feb 1, 2003 to May 1, 2003. The Commonwealth has not yet determined if these files exist and can be produced.

6. Petitioner's counsel has also just learned of a newly discovered witness, Abdu Rivera. Mr. Rivera, who is incarcerated, recently gave Petitioner's Private Investigator a statement over the phone. That statement was then transcribed and sent to Mr. Rivera to review, correct, sign and verify.
7. In that statement Mr. Rivera asserted that he had been in the area selling drugs when the shooting occurred. He saw two men wearing hoodies and that one of these men was the shooter. He asserted that neither of the two males wearing hoodies was the Petitioner. Mr. Rivera ran from the scene and was never interviewed or identified by police.
8. It is believed that Mr. Rivera's testimony is additional 'new' evidence of actual innocence. This 'new' evidence will have to be raised and exhausted in state court.
9. Petitioner will be filing a 'new' evidence PCRA petition once both the signed statement from Rivera is received and any review of the Narcotics Task Force 5 files is complete.
10. Petitioner therefore requests that this Court stay of this matter to permit the above.

11. Petitioner has been in touch with David Napiorski who relayed his non-opposition to this request.

Respectfully submitted,

/s/ Teri B. Himebaugh, Esq.

Teri B. Himebaugh, Esq.

CERTIFICATE OF SERVICE

The undersigned counsel for Defendant hereby certifies pursuant to Pa.R.A.P 121 and 18 Pa.C.S. 4904 that a true and correct copy of the attached has been filed with the Court and mailed first class, postage prepaid this 7th day of June 2022 upon the following:

US District Court ED. PA (electronic)

ADA David Napiorski
Office of the District Attorney for Philadelphia County
3 South Penn Sq.
Federal Litigation Unit
Philadelphia, PA 19106

Richard Frankel, Esq. (email)
Drexel University

/s/ Teri B. Himebaugh, Esq.

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